

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Rule making related to food and consumer safety

The Inspections and Appeals Department hereby amends Chapter 30, “Food and Consumer Safety,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 10A.104, 137C.6, 137D.2 and 137F.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, Senate File 2390.

Purpose and Summary

This adopted rule making implements changes made to Iowa Code chapter 137F resulting from the enactment of 2018 Iowa Acts, Senate File 2390. The legislation amended definitions to be consistent with the current Food Code issued by the U.S. Food and Drug Administration (FDA) and modified fees and penalties.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4026C**. No public comments were received. The adopted rule making includes two changes from the Notice. The term “time/temperature control for safety” defined in rule 481—30.2(10A,137C,137D,137F) was changed to “time/temperature control for safety food” to be consistent with the term defined in 2018 Iowa Acts, Senate File 2390, section 5. A rule implementation clause was added to new rule 481—30.7(137F).

Adoption of Rule Making

This rule making was adopted by the Department on October 31, 2018.

Fiscal Impact

The Legislative Services Agency, Fiscal Services Division, estimated an increase in revenue to the General Fund of approximately \$1.3 million annually due to the fee increases approved in 2018 Iowa Acts, Senate File 2390 (Fiscal Note, April 26, 2018).

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 1, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Event,” “Time/temperature control for safety food” and “Vending machine location” in rule **481—30.2(10A,137C,137D,137F)**:

“*Event*” means a significant occurrence or happening sponsored by a civic, business, governmental, community, or veterans organization and may include an athletic contest. For example, an event does not include a single store’s grand opening or sale.

“*Time/temperature control for safety food*” means a food that requires time and temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

“*Vending machine location*” means the room, enclosure, space, or area where one or more vending machines are installed and operated, including the storage areas on the premises that are used to service and maintain the vending machine.

ITEM 2. Amend rule **481—30.2(10A,137C,137D,137F)**, definitions of “Farmers market potentially hazardous food license,” “Food establishment,” “Home bakery,” “Pushcart,” “Temporary food establishment” and “Vending machine,” as follows:

“*Farmers market ~~potentially hazardous~~ time/temperature control for safety food license*” means a license for a temporary food establishment that sells ~~potentially hazardous~~ time/temperature control for safety foods at farmers markets. A separate annual farmers market ~~potentially hazardous~~ time/temperature control for safety food license is required for each county in which the licensee sells ~~potentially hazardous~~ time/temperature control for safety foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers.

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, or the state training school ~~and the Iowa juvenile home~~. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not ~~potentially hazardous~~ time/temperature control for safety foods.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home bakery pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market if time/temperature control for safety foods are not sold or distributed from the premises.
6. Premises of a residence in which food that is not ~~potentially hazardous~~ a time/temperature control for safety food is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. to 17. No change.

“*Home bakery*” means a business on the premises of a residence that is operating as a home-based bakery where baked goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$35,000. “Home bakery” does not include:

1. A food establishment;
2. A food processing plant;
3. A residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations;
4. A residence that prepares or distributes honey;
5. A residence that distributes shell eggs;
6. A residence that prepares ~~nonhazardous~~ foods that are not time/temperature control for safety foods for sale at a farmers market; or
7. A residence that prepares ~~nonhazardous~~ baked goods that are not time/temperature control for safety foods sold directly from the residence. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.

“*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving ~~nonpotentially hazardous~~ foods that are not time/temperature control for safety foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

“*Temporary food establishment*” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event ~~or celebration~~. ~~An “event or celebration” is a significant occurrence or happening sponsored by a civic, business, educational, government, community, or veterans’ organization and may include athletic contests. For example, an event does not include a single store’s grand opening or sale.~~

“*Vending machine*” means ~~a food establishment which is~~ a self-service device ~~that which~~, upon insertion of a coin, paper currency, token, card or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, ~~nonpotentially hazardous~~ foods that are not time/temperature control for safety foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. “Panned candies” are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

ITEM 3. Amend subrule 30.3(1) as follows:

30.3(1) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market ~~potentially hazardous~~ time/temperature control for safety food license may be used in the same county at different individual locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

ITEM 4. Amend subrule 30.3(3) as follows:

30.3(3) *License expiration.* A license is renewable and expires after one year, with the exception of a temporary food establishment license, ~~which is event- and location-specific and is issued in conjunction with a single event at a specific location, which is~~ valid for a period not to exceed 14 consecutive days.

ITEM 5. Amend rule 481—30.4(137C,137D,137F) as follows:

481—30.4(137C,137D,137F) License fees. The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

30.4(1) Retail food establishments. License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. For annual gross sales of less than ~~\$10,000~~ \$250,000—~~\$40.50~~ \$150.
- b. For annual gross sales of ~~\$10,000 to \$250,000~~ \$250,000 to \$750,000—~~\$101.25~~ \$300.
- c. ~~For annual gross sales of \$250,000 to \$500,000~~ \$155.25.
- d. ~~For annual gross sales of \$500,000 to \$750,000~~ \$202.50.
- e. ~~c.~~ For annual gross sales of more than \$750,000 or more—~~\$303.75~~ \$400.

30.4(2) Food service establishments. License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

- a. For annual gross sales of less than ~~\$50,000~~ \$100,000—~~\$67.50~~ \$150.
- b. For annual gross sales of ~~\$50,000 to \$100,000~~ \$100,000 to \$500,000—~~\$114.50~~ \$300.
- c. ~~For annual gross sales of \$100,000 to \$250,000~~ \$236.25.
- d. ~~For annual gross sales of \$250,000 to \$500,000~~ \$275.00.
- e. ~~c.~~ For annual gross sales of more than \$500,000 or more—~~\$303.75~~ \$400.

30.4(3) Vending machines. License fees for food and beverage vending machines are ~~\$20~~ \$50 for the first machine and ~~\$5~~ \$10 for each additional machine (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

30.4(4) Home bakery. The license fee for a home bakery is ~~\$33.75~~ \$50 (Iowa Code section 137D.2(1) as amended by 2018 Iowa Acts, Senate File 2390).

30.4(5) Hotels. License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to ~~15~~ 30 guest rooms—~~\$27.00~~ \$50.
- b. For ~~16 to 30~~ 31 to 100 guest rooms—~~\$40.50~~ \$100.
- c. For ~~31 to 75~~ 101 or more guest rooms—~~\$54.00~~ \$150.
- d. ~~For 76 to 149 guest rooms~~ \$57.50.
- e. ~~For 150 or more guest rooms~~ \$101.25.

30.4(6) Mobile food units or pushcarts. The license fee for a mobile food unit or a pushcart is ~~\$27~~ \$250 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

30.4(7) Temporary food service establishments.

a. The fee for a temporary food ~~service~~ establishment license issued for up to 14 consecutive days in conjunction with a single event ~~or celebration~~ is ~~\$33.50~~ \$50 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390).

b. The annual fee for a temporary food establishment license issued for multiple nonconcurrent events on a countywide basis during a calendar year is \$200 (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390). Temporary food establishments that operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(8) Food processing plants including food storage facilities (warehouses). For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

- a. ~~Annual~~ For annual gross sales of less than ~~\$50,000~~ \$200,000—~~\$67.50~~ \$150.
- b. ~~Annual~~ For annual gross sales of ~~\$50,000 to \$250,000~~ \$200,000 to \$2 million—~~\$135.00~~ \$300.
- c. ~~Annual gross sales of \$250,000 to \$500,000~~ \$202.50.
- d. ~~c.~~ ~~Annual~~ For annual gross sales of ~~\$500,000 or more~~ more than \$2 million—~~\$337.50~~ \$500.

30.4(9) Farmers market. A person selling ~~potentially hazardous~~ time/temperature control for safety food at a farmers market must pay an annual license fee of ~~\$400~~ \$150 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

~~30.4(10) Discount Certificate of free sale or sanitation.~~ If an establishment renews its license as a retail food establishment or food service establishment and has had a person in charge for the entire previous 12-month period who holds an active certified food protection manager certificate from a program approved by the Conference on Food Protection and the establishment has not been issued a critical violation during the previous 12-month period, the establishment's license fee for the current renewal period shall be reduced by \$50 but no more than the establishment's total license fee(s). The fee for a certificate of free sale or sanitation is \$35 for the first certificate and \$10 for each additional identical certificate requested at the same time.

~~30.4(11) Unattended food establishment.~~ The annual license fee for an unattended food establishment is based on the annual gross food and beverage sales (Iowa Code section 137F.6 as amended by 2018 Iowa Acts, Senate File 2390) as follows:

a. Annual gross sales of less than \$100,000—\$75.

b. Annual gross sales of \$100,000 or more—\$150.

~~30.4(12) Events.~~ The license fee for an event is \$50, which shall be submitted with a license application to the appropriate regulatory authority at least 60 days in advance of the event. An "event" for purposes of this subrule does not include a function with ten or fewer temporary food establishments, a fair as defined in Iowa Code section 174.1, or a farmers market.

~~30.4(11)~~ ~~30.4(13)~~ *Voluntary inspection fee.* The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6 and 2018 Iowa Acts, Senate File 2390.

ITEM 6. Rescind rule 481—30.7(137F) and adopt the following **new** rule in lieu thereof:

481—30.7(137F) Double licenses. A food establishment that holds both a food service establishment license and a retail food establishment license shall pay a license fee based on the annual gross sales for the dominant form of business plus \$150.

EXAMPLE: A food establishment holds a food service establishment license and a retail food establishment license. It has annual gross sales of more than \$750,000 for its retail food establishment and \$120,000 for its food service establishment. The food establishment pays a license fee of \$400 for its retail food establishment license (paragraph 30.4(1) "c") and \$150 for its food service establishment license (rule 481—30.7(137F)).

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

ITEM 7. Amend rule 481—30.8(137C,137D,137F) as follows:

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) Food establishments. Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 36 months ~~and no more than once every 3 months.~~

30.8(2) Food processing plants. Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 60 months ~~and no more than once every 6 months.~~ If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

30.8(3) Food processing plants that store foods. Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 36 ~~84~~ months. If the United States Food and Drug Administration completes an inspection in a facility, the inspection shall count as a state inspection for frequency purposes.

30.8(4) Hotels. Hotels shall be inspected at least once biennially.

30.8(5) Home bakeries and vending machines. Home bakeries and vending machines shall ~~be inspected at least once every 24 months~~ have a pre-opening inspection and then shall not have a specific inspection frequency. An inspection may be triggered, for example, by complaints, potential foodborne illness, or information about potential violations of law or rules.

30.8(6) *Farmers market ~~potentially hazardous~~ time/temperature control for safety food.* Farmers market ~~potentially hazardous~~ time/temperature control for safety food licensees shall be inspected at least once annually.

30.8(7) *Temporary food establishments.* Temporary food establishments issued an annual license pursuant to paragraph 30.4(7) “b” shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 137F.10.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/21/18.